

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

CASE NO. 23-14232-CIV-CANNON/McCabe

GLORIA ROLLE,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC.,

Defendant.

**ORDER ACCEPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION [ECF No. 17]**

THIS CAUSE comes before the Court upon the Magistrate Judge's Report and Recommendation on Defendant's Motion to Dismiss (the "Report") [ECF No. 17], filed on September 27, 2023. On August 9, 2023, Defendant filed a Motion to Dismiss (the "Motion"), requesting that the Court dismiss Count I (Negligence) of Plaintiff's Amended Complaint as a whole, or in the alternative, strike impertinent pleadings [ECF No. 6]. On September 27, 2023, following referral, Judge Ryon M. McCabe issued a Report recommending that the Motion be granted in part and denied in part [ECF No. 17]. Objections to the Report were due on October 11, 2023 [ECF No. 17 p. 6]. No party filed objections, and the time to do so has expired [ECF No. 17 p. 6].

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See* Fed. R. Civ. P. 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject,

CASE NO. 23-14232-CIV-CANNON/McCabe


or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1). To the extent a party fails to object to parts of the magistrate judge's report, the Court may accept the recommendation so long as there is no clear error on the face of the record. *Macort*, 208 F. App'x at 784. Legal conclusions are reviewed de novo, even in the absence of an objection. *See LeCroy v. McNeil*, 397 F. App'x 554, 556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

Following de novo review, the Court finds the Report to be well reasoned and correct. For the reasons set forth in the Report [ECF No. 17 pp. 2–6], it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation [ECF No. 17] is **ACCEPTED**.
2. The Motion [ECF No. 6] is **DENIED** as to Count I for negligence.
3. The Motion is **GRANTED** to the extent Plaintiff attempts to state a claim for negligent mode of operation and/or negligent training. Any such claim is **DISMISSED WITH PREJUDICE** in light of Plaintiff's concession that she does not seek to bring such a claim [*see* ECF No. 10 p. 5].
4. The Motion is **DENIED** to the extent Defendant seeks to strike allegations pursuant to Fed. R. Civ. P. 12(f).
5. **On or before October 27, 2023**, Defendant shall file its Answer to Plaintiff's Amended Complaint, in accordance with this Order.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 13th day of October 2023.


AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record